

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE JOHN P.)
) 2 CA-JV 2011-0123
) DEPARTMENT B
)
) MEMORANDUM DECISION
) Not for Publication
) Rule 28, Rules of Civil
) Appellate Procedure
)
_____)

APPEAL FROM THE SUPERIOR COURT OF SANTA CRUZ COUNTY

Cause No. JT11215

Honorable Kimberly A. Corsaro, Judge Pro Tempore

VACATED

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ESPINOSA, Judge.

¶1 After he admitted he had consumed alcohol and, therefore, had spirituous liquor in his body, in violation of A.R.S. § 4-244(41), a class two misdemeanor, then seventeen-year-old John P. was adjudicated delinquent and placed on probation until his eighteenth birthday. On appeal he contends he never was informed he was entitled to appointed counsel and entered the admission without counsel. He also contends the court failed to establish on the record that the admission was knowing, voluntary, and intelligent.

¶2 The record establishes John was not represented by counsel at the advisory hearing that evolved into an adjudication and disposition hearing. The state maintains John was not entitled to counsel because the case was handled as a civil traffic matter. According to the state's argument, John was not facing possible detention and the judge, sitting as a hearing officer as opposed to a juvenile court judge, lacked authority to enter such an order, even assuming detention was a disposition alternative for this kind of offense. *See* A.R.S. § 8-323(B) (purchase, possession, or consumption of spirituous liquor by juvenile among types of offenses juvenile hearing officer can adjudicate), (F) (limiting sanctions juvenile hearing officer can impose and permitting hearing officer to "transfer the citation to the juvenile court for all further proceedings"). The state's conclusion is premised, in part, on its characterization of this matter as merely a civil traffic proceeding.

¶3 This case began with the issuance of an “Arizona Traffic Ticket and Complaint” based on “Liquor in body (under 21 yrs).” Apparently, however, the matter was referred to the juvenile court to be handled as a delinquency proceeding after John chose not to participate in a diversion program as a means of resolving the charge. Although there is some ambiguity as to the nature of this proceeding because no delinquency petition was ever filed, and because the case retained its “JT” or juvenile traffic number and was not issued a “JD” or juvenile delinquency number, we conclude the matter ultimately was processed as a delinquency proceeding because the court did not simply find John responsible for the offense, but adjudicated him delinquent. As discussed below, the distinction is significant. *See* A.R.S. § 8-202(A), (E) (distinguishing juvenile court’s jurisdiction over delinquency proceedings from jurisdiction of proceedings involving civil traffic violations and offenses listed in A.R.S. § 8-323).

¶4 Had this case been processed simply as a civil traffic violation pursuant to § 8-323, the state would be correct that the court could order only the sanctions provided in § 8-323(F). But the court not only found John had committed the offense based on his admission, it also adjudicated him delinquent and entered a disposition consistent with that determination. *See* A.R.S. § 8-201(11) (defining “[d]elinquent juvenile” as “a child who is adjudicated to have committed a delinquent act”), (10) (defining “[d]elinquent act” as including “an act by a juvenile” that is “a violation of any law of this state”). And after adjudicating a minor delinquent, the juvenile court may impose any of the disposition alternatives available under A.R.S. § 8-341(A), which include, inter alia,

placing the juvenile on probation, “subject to any conditions the court may impose, including a period of incarceration in a juvenile detention center of not more than one year,” or incarcerating the juvenile to serve a period of incarceration at the department of juvenile corrections.

¶5 Although § 8-341(I) states “[a] juvenile who is charged with unlawful . . . possession or consumption of spirituous liquor is subject to § 8-323,” when the two statutes are read together, nothing in the plain language of either statute takes from a juvenile court judge the disposition alternatives available to her under § 8-341(A) or limits her authority to that which is listed in § 8-323(F), once she has adjudicated the juvenile delinquent based on the offense. Rather, the provisions of the two statutes can apply simultaneously and without conflict when a judge, not a hearing officer, has presided over the matter and when, as here, the judge has adjudicated the juvenile delinquent. *See In re Nickolas T.*, 223 Ariz. 403, ¶ 6, 224 P.3d 219, 221 (App. 2010) (acknowledging general principles of statutory construction, which require courts to effectuate legislative intent when construing statutes, best reflected in plain language, and to construe statutes as harmonious and consistent when possible).

¶6 Section 8-221(A), A.R.S., provides in relevant part that “[i]n all proceedings involving offenses . . . that may result in detention, a juvenile has the right to be represented by counsel.” *See also* Ariz. R. P. Juv. Ct. 10(A) (juvenile has right to counsel “in all delinquency and incorrigibility proceedings as provided by law”). As previously noted, detention is among the disposition alternatives available to the court,

even if as a condition of probation. *See* § 8-341(A)(1)(e). Additionally, as the state concedes, John could have been facing detention were he to have violated probation after it was imposed. *See* § 8-341(U). Although he was only months from his eighteenth birthday and had little time to violate and be adjudicated on any alleged violation, this does not, as the state suggests, negate the exposure he was facing both by being adjudicated delinquent in the first instance and by being placed on probation that might be revoked.

¶7 We conclude John was entitled to counsel in this proceeding. But he never was advised he had the right to counsel; he never waived the right to counsel, as discussed below; and the court adjudicated him delinquent after he admitted violating the law that prohibits a person under the age of twenty-one from consuming spirituous liquor. *See* § 4-244(41). Based on this error alone, which is structural, the order adjudicating John delinquent and placing him on probation is void and must be vacated. *See State v. Ring*, 204 Ariz. 534, ¶¶ 45-46, 65 P.3d 915, 933-34 (2003) (acknowledging complete denial of counsel to criminal defendant regarded as structural error requiring automatic reversal); *cf. Daniel Y. v. Ariz. Dep't of Econ. Sec.*, 206 Ariz. 257, ¶ 12, 77 P.3d 55, 58 (App. 2003) (given mandate by § 8-221 that counsel be appointed for indigent parent in severance proceeding, “order or judgment . . . predicated on a hearing in which a parent is denied the opportunity to be heard by counsel if requested is void.”),

quoting *Ariz. State Dep't of Pub. Welfare v. Barlow*, 80 Ariz. 249, 253, 296 P.2d 298, 300 (1956).¹

¶8 Although the state suggests we remand this matter to the juvenile court, we cannot do so because the court lost jurisdiction over John and this matter on December 24, 2011, John's eighteenth birthday. See § 8-202(G) (providing juvenile court's jurisdiction of child in juvenile court proceedings continues "until the child becomes eighteen years of age, unless terminated by order of the court before the child's eighteenth birthday"). Therefore, having concluded the admission was invalid, we vacate the juvenile court's order adjudicating John delinquent. The disposition portion of the order is vacated as well; however, probation terminated in any event when John turned eighteen years of age, rendering moot any claim that the challenges John has raised to the proceeding generally relate to the propriety of the disposition as well.

¹We note the record also supports John's argument that the juvenile court did not address him personally at the advisory/adjudication/disposition hearing and inform him of his constitutional rights, confirm that he understood those rights, and ascertain whether he truly wished to waive them. The state concedes the court erred. "[T]o be valid, the record of an admission in the juvenile system must reflect that the juvenile was aware of the right against self-incrimination, the right to confront accusers, and the right to a trial in the form of an adjudication proceeding" *In re Timothy M.*, 197 Ariz. 394, ¶ 18, 4 P.3d 449, 453 (App. 2000). The court must "personally address the juvenile [at a hearing] to ensure that the plea agreement and consequent waiver of constitutional rights comport with all due process requirements." *Id.*; see also *In re Juan A.*, 196 Ariz. 183, ¶ 7, 993 P.2d 1147, 1149 (App. 2000) (incurability adjudication that preceded delinquency adjudication defective because hearing officer had failed to advise juvenile of rights, consequences of waiving rights, and "obtain a waiver that is knowingly, intelligently, and voluntarily given on the record").

¶9

The juvenile court's order is vacated.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge